

STATEMENT OF COLONEL SHAWN SHUMAKE

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

UNITED STATES HOUSE OF REPRESENTATIVES

ON MORTGAGE-RELATED VIOLATIONS OF THE

SERVICEMEMBERS CIVIL RELIEF ACT

FEBRUARY 9, 2011

Chairman Miller and members of the Committee, thank you for extending the invitation to the Department of Defense to comment on the Servicemembers Civil Relief Act (SCRA) and explain how we educate our servicemembers, their families, and private industry about it. The Department recognizes the fundamental importance of the SCRA. No other statute provides the breadth of benefits and protections for servicemembers as are found in the SCRA. It protects those who have dropped their own affairs and taken up those of the nation.

Purpose and Importance of the SCRA

The purpose of the SCRA is no less lofty than to provide servicemembers' peace of mind, knowing that while they put their lives at risk to protect this great nation, their personal affairs and economic interests will be protected. They and their families will be relieved from many of the day-to-day strains and pressures that the rest of us are more easily able to handle.

The SCRA's protections are broad and diverse. It protects servicemembers from evictions, default judgments, and foreclosure. It allows them to delay judicial proceedings and to cap their interest rates. It provides them and their spouses certain tax relief. It does more for our servicemembers than any other single law by shifting—at least temporarily—some of the burdens associated with military service from the servicemember to others more capable

of bearing those burdens.

Congressional Efforts to Strengthen Enforcement of the SCRA

Congress continues to play the most critical role in protecting our servicemembers and their families. To ensure that the SCRA could be aggressively enforced by those it is designed to protect, the 111th Congress passed the Veterans' Benefit Act of 2010.¹ This law could have the most broad-reaching effect of any single change to the SCRA since the overhaul and update of the SCRA in 2003. The Veterans' Benefit Act of 2010 clarified that servicemembers and others that it protects could seek civil enforcement through the courts and receive monetary damages and attorneys' fees. It also clarified that the Attorney General has similar enforcement authority on behalf of servicemembers and other aggrieved persons.

Although many courts had found that such a private right of action was implied, others have resisted this interpretation, leading to the almost unconscionable conclusion that servicemembers had benefits and protections that could not be enforced. In *Hurley v. Deutsche Bank Trust Co. Americas*,²

¹ Section 303 of the Veterans' Benefit Act of 2010, Public Law 111-275, October 13, 2010, amended the Servicemembers Civil Relief Act (50 USC App. § 501 et seq) by adding at the end new title VIII, Civil Liability. This title contains new sections of the Servicemembers Civil Relief Act: 801, Enforcement by the Attorney General; 802, Private Right of Action, and 803, Preservation Of Remedies. These have been codified as sections 50 USC App §§ 597, 597a and 597b.

² *Hurley v. Deutsche Bank Trust Co. Americas, et al*, 2008 WL 4539478 (W. D. Mich., 9/30/2008, Case No. 1:08-cv-361), *vacated by* 2009 WL 701006 (W.D. Mich. 3/13/2009).

which recently received front page coverage on the New York Times,³ the court initially ruled that a Michigan National Guardsman whose home was illegally foreclosed on and sold to a third party while the Guardsman was deployed to Afghanistan, had no legal remedy. Only through expert legal counterattacks by the servicemember's attorneys was the court persuaded to reverse its position—but only after adding six months to the already protracted litigation. Just the danger of such daunting impediments to the enforcement of smaller claims could leave servicemembers wronged, and without remedy. The Veterans' Benefit Act of 2010 ended such worries.

Substantive Changes to the SCRA

Congress has for the last several years recognized the burdens that military service places on servicemembers through a number of substantive changes to the SCRA designed to relieve some of the burdens associated with military service.

The 110th Congress recognized these burdens and amended the SCRA in 2008 to extend the 6% interest rate cap for pre-service *mortgage* obligations. This interest rate cap, which had been in effect for decades, had previously only applied for actual periods of active duty. This amendment extended the interest

³<http://www.nytimes.com/2011/01/27/business/27foreclose.html?scp=1&sq=John+Odom&st=nyt>

rate cap for pre-service *mortgage* obligations for an additional year after leaving active duty.⁴

At the same time, Congress also temporarily amended the SCRA to extend protections from foreclosure on pre-service mortgage obligations from 90 days to nine months after the servicemember leaves active duty. Under these conditions and during this time, no servicemember can be foreclosed on absent a court order.⁵ This extension to nine months would have reverted by law to the previous 90 days on January 1, 2011. In one of its last acts, the 111th Congress extended this sunset provision for two years.

Additional Statutory Protections Addressing the Burdens of Service

In February 2009, the 111th Congress provided \$555 million in the American Recovery and Reinvestment Act to expand the pre-existing Homeowner's Assistance Program (HAP) benefits to address unique economic pressures faced by military personnel who are required to relocate during adverse housing market conditions. Congress added another \$300 million for HAP in 2010.

HAP seeks to minimize the amount of financial harm—including risk of foreclosure, credit damage, or bankruptcy—that servicemember and civilian

⁴ P.L. 110-289, The Housing and Economic Recovery Act of 2008, § 2203(b).

⁵ P.L. 110-289, The Housing and Economic Recovery Act of 2008, §Section 2203(a).

beneficiaries may experience when they are compelled to relocate under military orders. As of January 27, 2011, HAP has assisted 4,483 homeowners at a program cost of \$674 million. Another 4,643 homeowners are currently being evaluated for eligibility.

On May 20, 2009, the 111th Congress recognized that because most servicemembers are not homeowners, but rather are renters, they faced particular difficulties when their landlords were foreclosed on. The Helping Families Save Their Homes Act of 2009,⁶ provides significant protections when such servicemembers face possible displacement. Although the above two statutes do not directly amend the SCRA, they recognize that servicemembers face challenges with their housing that puts them at greater risk than the rest of the country.

The Education Process

These amendments to the SCRA and the other powerful statutory provisions discussed above, show Congress clearly recognizes the difficulties of military service. Of course, the protections and benefits from these and other laws mean little if our servicemembers do not know about them.

The Service secretaries are directed to ensure that their members know about the benefits and protections of the SCRA and of other similar laws. This

⁶ P.L. 111-22, Title VII, the Protecting Tenants at Foreclosure Act of 2009, §§ 701-704.

educational process involves coordinated and overlapping efforts to alert the servicemembers and their commanders of these benefits and protections and then to ensure that the proper counselors are there to help the servicemember fully understand the nuances of the laws and receive everything the laws promise their full benefits and protections. The Department has worked closely with the Department of Justice, which has enforcement authority under the SCRA. Together DoD and DOJ have trained attorneys in the military legal assistance program so they are well prepared to answer service members' questions and identify potential violations of the SCRA. The military legal assistance program provides the first line of defense for our servicemembers; however, if they are unable to resolve the matter, the servicemember may be referred to private counsel or seek representation through any number of state and local pro bono programs. The DoJ has also intervened on behalf of service members when necessary to protect servicemember's rights and interests.

The Department's efforts to educate service members and their families center around the installation and the various reserve component mobilization and demobilization processing centers. These reserve component processing centers are particularly critical because two of the most important economic protections and benefits—the 6% interest rate cap and the extension of foreclosure protections—only apply to *pre-service* obligations. Accordingly, those most likely to benefit from these protections are Reservists and National Guardsmen called to active duty.

Because each of the Services has the authority to best determine how to provide the necessary training and counseling, the Department has asked the Services to set out how they educate their members about the SCRA. The timing of the Committee's request did not allow time to gather the data and then organize it to show the many ways the information is presented to the servicemember; therefore, that information will be submitted separately to the committee as soon as possible.